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Filing date: **06/05/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201070
Party	Plaintiff Anderson Valley Acquisition Company, LLC
Correspondence Address	THOMAS R LEAVENS LEAVENS STRAND GLOVER ADLER LLC 203 NORTH LASALLE STREET SUITE 2550 CHICAGO, CA 60601 UNITED STATES tleavens@lsglegal.com
Submission	Other Motions/Papers
Filer's Name	Heather R. Liberman
Filer's e-mail	hliberman@lsglegal.com, tleavens@lsglegal.com
Signature	/Heather R. Liberman/
Date	06/05/2012
Attachments	Opposer's Motion to Request Acceptance of Late Filed Response.pdf ( 3 pages ) (1715757 bytes ) Affidavit of Heather R. Liberman.pdf ( 3 pages )(1803901 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Application Serial No. 85178395: BOONVILLE CIDER HOUSE BITE  
HARD CIDER,**

**Published in the Official Gazette on April 26, 2011, in International Class 33**

<b>ANDERSON VALLEY ACQUISITION</b>	)	
<b>COMPANY, LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
<b>v.</b>	)	<b>Opposition No. 91201070</b>
	)	
<b>MATTHEW HARNDEN &amp; ROGER</b>	)	
<b>SCOMMEGNA</b>	)	
<b>Applicants</b>	)	

**OPPOSER'S MOTION TO ACCEPT LATE-FILED RESPONSE**

Opposer, Anderson Valley Acquisition Company, LLC ("Opposer"), respectfully requests that the Board accept Opposer's late-filed Response to Applicants' Motion for Summary Judgment ("Opposer's Response"). In support of its Motion, Opposer states as follows:

On June 3, 2012, Opposer's Response was due. Since June 3, 2012, fell upon a Sunday, Opposer's Response was due June 4, 2012. TBMP §112, 37 CFR §2.196.

On June 4, 2012, Opposer's Response was finished and ready for filing. (Affidavit of Heather Liberman, para. 1) Unfortunately, numerous technical issues arose surrounding formatting and uploading the documents to ESTTA, which caused the filing to require an unforeseeably lengthy amount of time. (Aff. of Liberman, paras. 2-3) Although counsel for Opposer was able to file the documents by 11:16pm CST, Opposer's Response is date-stamped as filed on June 5, 2012 because the U.S. Patent & Trademark Office applies Eastern Standard Time to filings.



Immediately upon filing, counsel for Opposer served Opposer's Response on counsel for Applicants. Therefore, Applicants' counsel received the filing within the deadline. (Aff. of Liberman, para. 4)

On June 5, 2012, Opposer's counsel contacted Applicants' counsel to request consent to authorize the sixteen-minute late-filing. (Aff. of Liberman, para. 5) Applicants' counsel refused consent. (Aff. of Liberman, para. 5)

WHEREFORE, Opposer respectfully requests the Board's acceptance of Opposer's late-filed Response to Applicants' Motion for Summary Judgment due to the unforeseeable technical issues that caused the delayed filing.

Respectfully submitted,

Leavens, Strand, Glover & Adler, LLC

By: 

Thomas R. Leavens

203 N. LaSalle Street, Suite 2550

Chicago, IL 60601

(312) 488-4170

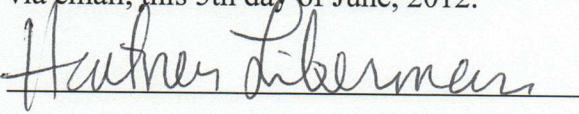
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of Opposer's Motion to Accept Late-Filed Response was served upon.

**Adam L. Brookman**  
**Boyle Fredrickson, S.C.**  
**840 North Plankinton**  
**Milwaukee, Wisconsin 53203**  
**abrookman@boylefred.com**

via email, this 5th day of June, 2012.

A handwritten signature in cursive script, reading "Heather Liberman", is written over a horizontal line.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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	)	
<b>Opposer,</b>	)	
	)	
<b>v.</b>	)	<b>Opposition No. 91201070</b>
	)	
<b>MATTHEW HARNDEN &amp; ROGER</b>	)	
<b>SCOMMEGNA</b>	)	
<b>Applicants</b>	)	

**AFFIDAVIT OF HEATHER R. LIBERMAN**

I, Heather Liberman, under oath state as follows:

1. Opposer's Response to Applicants' Motion for Summary Judgment ("Opposer's Response") was finalized on June 4, 2012.
2. On June 4, 2012, at 9:15pm CST, I commenced filing Opposer's Response with ESTTA.
3. Due to numerous technical issues, I was unable to finalize the filing until 11:16pm CST.
4. From 11:22 to 11:29 pm CST I electronically mailed Opposer's Response to counsel for Applicants.
5. On June 5, 2012, I contacted Applicants' counsel seeking consent to authorize the sixteen-minute late-filing of Opposer's Response. Applicants' counsel refused consent. Email correspondence attached hereto as Exhibit A.



FURTHER AFFIANT SAYETH NAUGHT  
Heather R. Liberman

Heather R. Liberman  
(Signature)

SUBSCRIBED and SWORN TO  
Before me this 5th day of June, 2012.

Marsha A. Stec



## Heather Liberman

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**From:** Adam Brookman <[alb@boylefred.com](mailto:alb@boylefred.com)>  
**Sent:** Tuesday, June 05, 2012 11:17 AM  
**To:** Heather Liberman  
**Subject:** Re: Consent

Dear Heather,

While I certainly appreciate your issues, I will not consent to the late filing. If I did not believe this opposition to be meritless and a complete waste of my clients' limited resources, I might feel otherwise.

Adam

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**From:** Heather Liberman <[hliberman@lsglegal.com](mailto:hliberman@lsglegal.com)>  
**Date:** Tuesday, June 5, 2012 10:07 AM  
**To:** Adam Brookman <[alb@boylefred.com](mailto:alb@boylefred.com)>  
**Cc:** Adam Brookman <[alb@boylefred.com](mailto:alb@boylefred.com)>  
**Subject:** Consent

Dear Adam:

I am following-up with you regarding the voicemail I left you this morning. Due to numerous technical problems related to formatting and uploading Opposer's Response to the Motion for Summary Judgment, we were not able to file our documents until 11:15pm CST. Since the USPTO applies EST, our filing is considered to be on June 5 - one day late.

It would be greatly appreciated if you would consent to a motion authorizing the late filing on account of the technical issues. We would like to get the motion on file this morning. Please let me know if you would like to discuss this matter further. I am available by phone at: 312-488-4168.

Best,

**Heather Liberman**

Leavens, Strand, Glover and Adler, LLC  
203 N. LaSalle Street, Suite 2550  
Chicago, IL 60601  
Phone: (312) 488-4168  
Cell: (917) 446-7932  
Email: [hliberman@lsglegal.com](mailto:hliberman@lsglegal.com)

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